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Attorneys for Defendants
6 PROGRESSIVE WEST INSURANCE
COMPANY, UNITED FINANCIAL CASUALTY
7 COMPANY, and PROGRESSIVE SELECT
INSURANCE COMPANY
8

9
10 **IN THE UNITED STATES DISTRICT COURT**
FOR THE NORTHERN DISTRICT OF CALIFORNIA

11 DENISE GRIFFIN, ADAMMA ISON, and
MELANIE BARBER, on behalf of themselves
and all others similarly situated,

Case No.: _____

12 Plaintiffs,

NOTICE OF REMOVAL

13
14 v.

15 PROGRESSIVE WEST INSURANCE
COMPANY, UNITED FINANCIAL
CASUALTY COMPANY, and
16 PROGRESSIVE SELECT INSURANCE
COMPANY,
17

18 Defendants.

19
20 **TO THE CLERK OF THE ABOVE-ENTITLED COURT AND TO EACH PARTY**
21 **AND THEIR ATTORNEY OF RECORD:**

22 PLEASE TAKE NOTICE THAT pursuant to the Class Action Fairness Act of 2005
23 (“CAFA”), 28 U.S.C. §§ 1332(d), 1453, and pursuant to 28 U.S.C. §§ 1441 and 1446, Defendants
24 Progressive West Insurance Company, United Financial Casualty Company, and Progressive
25 Select Insurance Company (collectively, “Progressive”) hereby remove this action from the
26 Superior Court of the State of California, County of Alameda, to the United States District Court
27
28

1 for the Northern District of California. In support of this Notice of Removal, Progressive states as
2 follows:

3 1. Plaintiffs Denise Griffin, Adamma Ison, and Melanie Barber commenced this
4 action in the Superior Court of the State of California, County of Alameda, by filing the
5 Complaint on or about March 24, 2022. Defendants were each served with the Complaint on
6 March 31, 2022.

7
8 2. Plaintiffs' Complaint alleges that Progressive misused marital status as an optional
9 rating factor in calculating premiums for their personal auto insurance. The Complaint asserts
10 claims for statutory damages for violations of the Rosenthal Auto Insurance Nondiscrimination
11 Law ("Rosenthal Law") and Unruh Civil Rights Act ("Unruh Act").

12 3. The Complaint seeks certification of the following classes:

- 13
14 a. All persons within the three-year period prior to the date this Action was
15 filed through the date the Class is certified who paid for and were issued,
16 were re-issued or renewed private passenger motor vehicle liability
17 insurance policies issued by Progressive West Insurance Company in
18 California, and whose policy premiums were calculated, in whole or in part,
19 by using the "single" marital status of a "rated driver" at the time their
20 policy was issued, re-issued, or renewed.
- 21
22 b. All persons within the three-year period prior to the date this Action was
23 filed through the date the Class is certified who paid for and were issued,
24 were re-issued or renewed private passenger motor vehicle liability
25 insurance policies issued by United Financial Casualty Company in
26 California, and whose policy premiums were calculated, in whole or in part,
27 by using the "single" marital status of a "rated driver" at the time their
28 policy was issued, re-issued, or renewed.

(Compl. ¶¶ 131, 133, 135) (the "Proposed Classes"). These classes exclude the Defendants and

1 their affiliated persons and entities, the judges to whom this action is assigned, government
2 entities, and anyone who timely and properly requests exclusion from the Class. (*Id.* ¶¶ 132, 134,
3 136.) Progressive denies that class certification is appropriate, but the Proposed Classes satisfy
4 the requirements for CAFA jurisdiction.

5 **I. CAFA Jurisdiction Exists.**

6
7 4. This Court has original jurisdiction under CAFA because this case is a putative
8 class action in which: (a) minimal diversity exists—that is, at least one class member is a citizen
9 of a different state than at least one defendant; (b) the alleged class contains at least 100 members;
10 and (c) the amount in controversy exceeds \$5,000,000, exclusive of costs and interest.

11 5. This action is properly removable under CAFA.

12 **A. The Parties Are Diverse, and No Exception to Jurisdiction Exists.**

13
14 6. Plaintiffs allege that they are citizens of California. (Compl. ¶ 28.) Plaintiff
15 Adamma Ison alleges she resides in Oakland, Alameda County, California. (*Id.* ¶ 18.) Plaintiff
16 Denise Griffin alleges she resides in Hayward, Alameda County, California. (*Id.* ¶ 19.) Plaintiff
17 Melanie Barber alleges she resides in Upland, San Bernadino County, California. (*Id.* ¶ 20.)

18 7. Defendant United Financial Casualty Company is incorporated under the laws of
19 Ohio and has its principal place of business in Mayfield Village, Cuyahoga County, Ohio. United
20 Financial Casualty Company is thus a citizen of Ohio for diversity purposes.

21
22 8. Defendant Progressive Select Insurance Company is incorporated under the laws of
23 Ohio and has its principal place of business in Mayfield Village, Cuyahoga County, Ohio.
24 Progressive Select Insurance Company is thus a citizen of Ohio for diversity purposes.

25 9. Defendant Progressive West Insurance Company is incorporated under the laws of
26 Ohio and has its principal place of business in Mayfield Village, Cuyahoga County, Ohio.
27 Progressive West Insurance Company is thus a citizen of Ohio for diversity purposes.
28

1 10. Minimal diversity of citizenship thus exists under CAFA. 28 U.S.C.
2 § 1332(d)(2)(A).

3 11. Because Defendants are not citizens of the State of California nor governmental
4 entities, the exceptions to CAFA jurisdiction set forth in 28 U.S.C. § 1332(d) do not apply to this
5 action.

6
7 **B. The Proposed Class Consists of More Than 100 Members.**

8 12. The number of members of the Proposed Class is not less than 100. *See* 28 U.S.C.
9 § 1332(d)(5)(B).

10 13. Plaintiffs allege that each of the Proposed Classes include “thousands, if not tens of
11 thousands, of people.” (Compl. ¶ 139.)

12 14. Progressive’s data shows that it issued, reissued, or renewed policies to hundreds of
13 thousands of Californians whose marital status was single.

14
15 **C. The Amount in Controversy Is Met.**

16 15. Under CAFA, the district courts have original jurisdiction over class actions “in
17 which the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and
18 costs.” 28 U.S.C. § 1332(d)(2). A defendant seeking removal need not admit liability in order to
19 meet the amount in controversy. Rather, the Notice of Removal need only include a plausible
20 allegation that the amount in controversy exceeds the jurisdictional threshold. *See Dart Cherokee*
21 *Basin Operating Co. v. Owens*, 574 U.S. 81, 89 (2014).

22 16. The amount in controversy in this action exceeds \$5 million, exclusive of interest
23 and costs. *See* 28 U.S.C. § 1332(d)(6). The Complaint seeks statutory damages pursuant to the
24 Unruh Act and Rosenthal Law, as well as attorneys’ fees and costs. (Compl. ¶ 3.)

25 17. Plaintiffs seek \$100.00 in statutory damages for every alleged violation of the
26 Rosenthal Law. (Compl. ¶¶ 3, 154, 163, 172.) The California Insurance Code provides: “Each
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1 separate act of an insurer or its agent in violation of Section 11628 [the Rosenthal Law] or
2 11628.5 shall render the insurer liable in damages in the amount of one hundred dollars (\$100),
3 plus . . . attorneys' fees." Cal. Ins. Code § 11629.

4 18. Plaintiffs also seek damages under the Unruh Act. (Compl. ¶¶ 3, 178-179, 185-
5 186, 192-193.) The Unruh Act provides for damages up to a maximum of three times the amount
6 of actual damages, but in no case less than \$4,000 per occurrence, plus attorneys' fees. *See* Cal.
7 Civ. Code § 52(a); *Love v. Undeclared Apparel Inc.*, No. C 20-00330 WHA, 2021 U.S. Dist.
8 LEXIS 70458, at *13 (N.D. Cal. Apr. 12, 2021) ("The Unruh Act allows for a minimum award of
9 \$4,000 per violation.").

10 19. The Ninth Circuit has held that the amount in controversy includes attorneys' fees
11 "if authorized by statute or contract." *See Kroske v. U.S. Bank Corp.*, 432 F.3d 976, 980 (9th Cir.
12 2005). Attorneys' fees are expressly recoverable for violations of the Unruh Act, Cal. Civ. Code
13 § 52(a), which provides that violators are liable for actual damages and "any attorney's fees that
14 may be determined by the court in addition thereto" Attorneys' fees are also recoverable for
15 violations of the Rosenthal Law. Cal. Ins. Code § 11629. Because Plaintiffs seek attorneys' fees
16 and such fees are recoverable under both the Unruh Act and the Rosenthal Law, attorneys' fees are
17 properly considered and added to the amount in controversy calculation.

18 20. Progressive's data shows Progressive West alone issued policies to more than
19 400,000 rated drivers in California whose marital status was single, and issued, reissued, or
20 renewed policies for those drivers over 1.4 million times during the putative class period. As
21 noted above, Plaintiffs seek to recover at least \$4,000 for each Unruh Act violation and \$100 for
22 each Rosenthal Law violation, even before accounting for attorneys' fees. Thus, the amount
23 placed into controversy by statutory damages asserted by only one of the Proposed Classes
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1 exceeds \$5 million, which amount is further increased by the other Proposed Classes and the claim
2 for attorneys' fees.

3 21. While Progressive denies that any damages—whether actual or statutory—or fees
4 are owed to Plaintiffs or to any member of the Proposed Classes, the class-wide relief sought by
5 the Complaint places significantly more than \$5 million in controversy within the meaning of
6 CAFA.
7

8 **II. Progressive Has Satisfied the Procedural Requirements for Removal.**

9 22. Defendants were served with the Complaint on March 31, 2022. This Notice of
10 Removal is timely filed within 30 days of that date.

11 23. Venue is proper in this Court because the Superior Court of California, County of
12 Alameda, is located in the Northern District of California, Oakland/San Francisco Division. *See*
13 28 U.S.C. § 1441(a).
14

15 24. Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of Removal is being served
16 upon counsel for Plaintiffs and filed with the Superior Court of the State of California, County of
17 Alameda.

18 25. The undersigned counsel has read the foregoing and signs this Notice pursuant to
19 Rule 11 of the Federal Rules of Civil Procedure, as required by 28 U.S.C. § 1446(a).
20

21 26. A copy of the Complaint and all other pleadings served to date are attached hereto
22 as **Exhibit A**.
23

24 WHEREFORE, Defendants Progressive West Insurance Company, United Financial
25 Casualty Company, and Progressive Select Insurance Company hereby remove this civil action
26 from the Superior Court of the State of California, County of Alameda, to this Court, under the
27 Class Action Fairness Act of 2005.
28

1 DATED: April 29, 2022

2 By: /s/ Amanda Villalobos

3 Amanda Villalobos (SBN 262176)

4 TUCKER ELLIS LLP

5 Attorneys for Defendants

6 PROGRESSIVE WEST INSURANCE

7 COMPANY, UNITED FINANCIAL

8 CASUALTY COMPANY, and PROGRESSIVE

9 SELECT INSURANCE COMPANY

CERTIFICATE OF SERVICE

I declare that I am a citizen of the United States and a resident of Los Angeles, California or employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is Tucker Ellis LLP, 515 South Flower Street, Forty-Second Floor, Los Angeles, California 90071-2223.

On **April 29, 2022**, I served the following: **NOTICE OF REMOVAL** on the interested parties in this action by:

- (X) **ELECTRONICALLY VIA ECF:** the above-entitled document to be served electronically through the United States District Court, Southern District ECF website, addressed to all parties appearing on the Court's ECF service list. A copy of the "Filing Receipt" page will be maintained with the original document in our office.
- (X) **BY E-MAIL OR ELECTRONIC TRANSMISSION:** I caused the documents to be sent to the persons at the e-mail addresses listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.
- (X) **BY OVERNIGHT DELIVERY:** I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed as noted below. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

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Attorney for Plaintiffs

Attorney for Plaintiffs

- (X) I declare that I am employed in the office of the Bar of this Court at whose direction the service was made.

Executed on **April 29, 2022**, at Los Angeles, California.

/s/ Erika Ortiz
Erika Ortiz